do not mature until 1987, the Court required that all bonds be presented for exchange by March 1, 1972, and if not, further declared that all rights and obligations under the bonds would be forfeited, and the bonds be null and void. The approved plan also provides that the debtor may issue, at a later date, unlimited amounts of "prior lien bonds", which will then become a superior claim to the revenue of the debtor over the bonds received in the exchange.

REASONS FOR GRANTING THE WRIT

1. The lower Court so completely disregarded its duties under the provisions of 11 U. S. C. 403 as to require this Court to exercise its power of supervision to correct such failure.

The governing statute, 11 U. S. C. 403 (e) (1), requires that the Court, before confirming a plan of composition, find that it is fair, equitable, and doese not discriminate in favor of any creditor or class of creditors. The lower Court made the following finding:

> . . . A part of the proceeds (of the refunding) would be used by the bankers to purchase outstanding bonds from persons . . . unwilling to exchange them for the new ones 352 F. (2d) at p. 79.

It is not disclosed in the plan nor in the record which dissenter's bonds would be purchased, and no general offer for the purchase of their bonds has been made to the other bondholders. Clearly, such a provision unfairly discriminates in favor of some unidentified creditor, and after making the above finding, the lower Court completely disregarded its duty to other bondholders in confirming the plan. The resulting prejudice to other bondholders requires that this Court exercise its powers of supervision to correct such inequity.

II. The decision of the Court below is not in accord with the applicable decision of this Court.

Pursuant to an agreement with the investment bankers promoting the plan, which agreement was never disclosed to the bondholders, certain bondholders were paid a fee of one-half of one percent (½ of 1%) of the face value of bonds whose acceptance of the plan they solicited. However, these same bondholders were also paid the same fee for filing their acceptance for bonds which they personally owned. No other bondholders received such fees, nor were they apprised that those bondholders soliciting consents to the plan were receiving such fees. The approval of such practices by the lower Court is in direct conflict with the decision of this Court in *American United Mutual Life Insurance Co. v. Avon Park,* 311 U. S. 138, which held that the very minimum requirement for fair dealing with creditors is the elementary obligation of full disclosure of all interests in the plan of those promoting its acceptance, at the time the creditors' assents to the plan are solicited. The practices approved by the lower Court are clearly in contravention of this principle.

III. The lower Court unlawfully exceeded its authority in impairing the bondholder's rights under their bonds, and in approving provisions of the plan which were not fair, equitable, and for the best interests of the creditors.

The holders of approximately $600,000.00 worth of these **unregistered** bonds were not located or notified of the proposed refunding plan. Despite the fact that their bonds do not mature until the year 1987, the entire investment of these bondholders will be completely wiped out if the bonds are not physically presented for exchange by March 1, 1972. The petitioning authority had asked that this drastic fact become true by March 1, 1967, thereby demonstrating its lack of good faith.

How can it be said that such a drastic proposal is "for the best interest of the creditor"? How can it be said that such a plan is "fair and equitable"? How can it be said that the taxing authority has acted in "good faith" in promoting such a proposition?

Such a forfeiture provision is clearly unreasonable, unfair, and not for the best interests of the creditors. It unlawfully impairs the obligation under the bonds which are involved, and the lower Court exceeded its authority in approving such an impairment.

IV. **The lower Court has decided an important question of federal law which has not been, but should be, settled by this Court.**

The plan of composition approved below allows the debtor to issue, at some later date, other "prior lien bonds" which will constitute a superior claim over the refunding bonds which the bondholders must accept under the plan. The bonds which now must be surrendered are first mortgage bonds, protected against impairment by State law. Section 59-681, Code of Laws of South Carolina, 1962. It is admitted that there is no statutory or judicial precedent supporting approval of this novel plan, which allows the debtor to subordinate the claims of its creditors at any time by the issuance of unlimited amounts of "prior lien bonds". No adequate explanation of this novel term was given in the only communication sent to the bondholders prior to the time their acceptance of the plan was filed. The memorandum sent to bondholders (Record, Exh. P-K) stated only:

> Prior Lien Bonds may be issued to construct a natural gas transmission line . . . (Petitioner's Appendix in lower court, p. 88.)

No explanation of the far-reaching effects of this term was given to the bondholders, despite the fact that neither

the promotors nor bond counsel favoring the present plan had ever encountered such a provision in a bond before (Petitioner's Appendix in lower court, p. 135).

The importance of the decision on this novel point, and its far-reaching effect upon future plans of composition presented under the federal statute, require that this Court express its disfavor with such plans which, in effect, totally destroy the security of bondholders in public taxing agencies.

The knowledge that, upon application under this statute, a debtor could subordinate its creditors by unlimited issues of new bonds could have serious effect upon the ability of such agencies to obtain ready financing for many projects in the public interest.

CONCLUSION

For the foregoing reasons this petition for writ of *certiorari* should be granted.

Respectfully submitted,

HENRY HAMMER,
JAMES P. MOZINGO, III,
Attorneys for Petitioner.